

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
Expanding the Economic and Innovation)	GN Docket No. 12-268
Opportunities of Spectrum Through Incentive)	
Auctions)	
)	

To: The Federal Communications Commission

REPLY COMMENTS BY J.H. SNIDER, ISOLON.ORG

March 12, 2013

I hereby respond to comments filed with respect to the Federal Communications Commission's ("FCC") above-captioned Notice of Proposed Rulemaking ("NPRM"), which formally launched the Commission's implementation of the broadcast incentive auction provisions of the Middle Class Tax Relief and Job Creation Act of 2012.¹

During several public hearings held by the FCC during 2012 in regard to this NPRM, I asked Ruth Milkman (Chief, Wireless Telecommunications Bureau) and Julius Knapp (Chair, FCC Office of Engineering and Technology) if the FCC had any information about the change in broadcasters MHz/population ("MHz-pop") coverage associated with the Digital TV ("DTV") transition, beginning with the passage in February 1996 of the Telecommunications Act of 1996 and ending with the return of the loaned "second TV channel" in June 2009. I was especially interested in expected changes in MHz-pop for various scenarios in the proposed Incentive Auction.

As you know, \$/MHz-pop is the primary metric used by financial analysts to evaluate the value of spectrum licenses. The FCC transferred tens of billions of dollars' worth of MHz-pop to the broadcast industry between February 1996 and June 2009 and appears to be proposing in the proposed incentive auction an additional transfer of similar magnitude. In anticipation of this transfer, many spectrum speculators have run up the value of broadcast licenses.²

Ruth Milkman replied that she was unaware of any such estimates and referred me to Julius Knapp. Mr. Knapp referred me to two sources and said this is the best information the FCC has gathered regarding the change in MHz-pop associated with the DTV transition.

¹ *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Notice of Proposed Rulemaking, 27 FCC Rcd 12357 (2012) ("NPRM"); Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, §§ 6401-14, 126 Stat. 156, 222-36 (2012) ("Spectrum Act"). The NPRM proposes to implement relevant portions of Sections 6401 to 6414 of the Spectrum Act.

² E.g., see "TV Spectrum Speculation Nears \$345 Million," *TVNewsCheck*, March 1, 2013.

The first source is the coverage of each station immediately before and after the DTV transition that occurred in June 2009 (see <http://transition.fcc.gov/mb/engineering/maps>). This is a highly incomplete account of the transfer of MHz-pop to broadcasters for at least several reasons. First, during the period between February 1996 and June 2009—that is, prior to the reference date used as the starting date for this map—the FCC transferred many MHz-pop to individual broadcasters as a result of a series of reallocations and license modifications that are not captured in this map. Second, the map assumes no change in the broadcasters' business model even though changes in the FCC's service rules, such as distributed transmission systems and the expected transition to the ATSC 3.0 transmission standard, allow broadcasters to communicate on many more MHz-pop by appropriating—without public compensation—previously unused spectrum such as guard bands and dark spots behind hilly terrain.

The second source, Appendix B: DTV Table of Allotment of the FCC's Second Memorandum Opinion and Order on Reconsideration of the Fifth and Sixth Report and Order, December 18, 1998 (see http://transition.fcc.gov/Bureaus/Mass_Media/Orders/1998/fcc98315.pdf), suffers from similar problems: a narrow before and after period, as well as an assumption that the broadcasters' current business model would remain in perpetuity.

As for the expected transfer of MHz-pop to broadcasters as a result of incentive auctions—for example, the MHz-pop gain to a Class A station if it can piggyback on a high power station with must-carry rights in the same TV market—the FCC has apparently made no calculations available to the public.

The FCC has in its power to calculate and make public not only the complete DTV MHz-pop transfers to the broadcasters but the MHz-pop transfers anticipated under its rulemaking. Such calculations would be in keeping with widely accepted good governance principles, including the spectrum windfall clauses in the Communications Act and numerous other acts passed by Congress to ensure that public assets are disposed of with just compensation to the public. An auction is supposed to do that but in this case the government is reversing the normal incentive schemes associated with the sale of public assets. Here the public assets are given away to private industry prior to or in conjunction with the auction.

Note that MHz-pop is admittedly a highly imperfect measure of the recent and proposed wealth transfer from the public to the broadcasters. For example, as part of the DTV transition, it doesn't include some broadcasters shift from relatively undesirable spectrum (e.g., the low VHF spectrum) to relatively high value spectrum (e.g., the low UHF spectrum) or all broadcasters shift from NTSC to ATSC, which included the right to broadcast up to 12 standard definition TV channels and various data services, as opposed to only a single standard definition TV channel with NTSC. In places such as the United Kingdom, the government took back some of this windfall; for example, allowing broadcasters to increase the number of channels they could broadcast sixfold while reducing by half the amount of spectrum licensed to each station.

Nevertheless, MHz-pop is a metric the FCC has used in the past. It is very simple and, as noted above, the standard shorthand metric used as the basis for financial analysts to value spectrum licenses. For broadcast license modifications, the public deserves to have access to this metric in a timely way so that it can evaluate how its spectrum assets are being managed on its behalf.